HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.33001 of 1997

Dated 13th Day of February, 2007

Between:

Dara Mallikarjuna Rao and
nine others .. Petitioners

And

The Government of Andhra Pradesh
Rep. By its Secretary, Revenue Department
A.P. Secretariat, Hyderabad
and eight others ..
Respondents

O R D E R:

This writ petition is filed to quash the notice dated 4.11.1995 issued by the 3rd respondent.

The brief facts of the case are that the petitioners, having purchased the government lands, occupied them in the year 1958 and ever since they have been in uninterrupted possession of them. When the revenue authority issued a notice dated 13.11.1985 to the petitioners under Section 7 of the Land Encroachment Act, 1905 (for brevity "the Act") indicating that they are encroachers, they filed W.P.No.14215 of 1985, which was dismissed. Against the order of dismissal, they filed W.A.No.502 of 1986 and this Court on 1.7.1992, disposed it of with a direction to the 4th respondent-Revenue Divisional Officer to hold an enquiry before initiating any action as per the provisions of the Act. Pursuant to the orders passed by this Court, the 4th respondent conducted an enquiry and passed an order, dated 30.6.1994 holding that the petitioners herein cannot be said to be the encroachers and further directed them to approach the Najim-e-Jamabandi Officer for due incorporation of their names as pattadars in the village records. Pursuant to the orders passed by the 4th respondent, the 5th respondent-Mandal Revenue Officer, in his proceedings dated 12.7.1994, dropped all further proceedings in view of the notice, dated 13.11.1985 under Section 7 of the Act, which was served on the petitioners. It is the further case of the petitioners that

pursuant to an application given by Kouluri Laxmudu and others for assignment of the lands, the 2nd respondent-Collector, Khammam, after considering the reports dated 8.5.1995 issued by the 5th respondent and the reports dated 15.5.1995 issued by 4th respondent, observed that the representation of K.Laxmudu is dubious and the petitioners i.e. Dara Venkata Ramaiah and others purchased the Government lands in public auction conducted by the then Tahasildar as early as in the year 1958 and the sale consideration also was remitted to the government, and thus rejected his representation. Be that as it may, according to the petitioners, again the 3rd respondent-Joint Collector, initiated proceedings under the Land Acquisition Act and issued the impugned notice dated 4.11.1995 directing the petitioners to show cause as to why they should not be evicted from the lands, and hence they have filed this writ petition.

Heard the learned counsel for both the parties.

The learned counsel for the petitioners has strenuously contended that the very impugned notice itself is bad and having regard to the earlier findings given by the 4th respondent and the 2nd respondent, the 3rd respondent-Joint Collector should not have initiated the proceedings.

However, the learned Government Pleader, based on the counter affidavit, has opposed the said submissions stating that the order passed by the then Revenue Divisional Officer by name V.Swamidas is dubious and the relevant portion of the order is extracted hereunder:

> *"It is submitted that the then Revenue Divisional Officer, Paloncha(V.Swamy Das) passed orders dropping the proceedings under the A.P.L.E. Act, 1905 against the petitioners. Sri V.Swamy Das, the then Revenue Divisional Officer, Paloncha is a dubious character and even after retirement, he allegedly signed number of ante-dated orders*

under the provisions of A.P. P.O.T. Act, 1977 and also under A.P. R.O.R. Act, 1989 etc. He signed number of title deeds also after retirement. For all these irregular orders, he was arrested by police and presently facing criminal charges. Besides this, the Government have issued orders to conduct enquiry into the irregularities and activities done by V.Swamy Das, during his tenure as Revenue Divisional Officer. In the instant case, V.Swamy Das also passed orders dropping further action against the petitioners. The petition of R6 and others were received alleging that the lands were grabbed by the writ petitioners and requested to take necessary action and to probe into the matter. Thus, all the orders passed by V.Swamy Das, the then Revenue Divisional Officer, Paloncha are being reviewed. It is further submitted that as averred in para (2), the matter has been taken up for enquiry and issued notice to both the parties and the case is pending enquiry before the 3rd respondent."

In the light of the averment made by the Government Pleader against the Revenue Divisional Officer, who passed the order holding that the petitioners are entitled to the grant of patta, cannot be accepted

In fact, this Court was initially of the view that the impugned notice issued under Section 7 of the Act is definitely bad having regard to the earlier orders passed by the 4th respondent-Revenue Divisional Officer and the 2nd respondent-District Collector. Having gone through the contents of the counter affidavit and heard the learned Government Pleader, this Court is of the view that there is some fraud in the said matter. Hence, the impugned notice dated 4.11.1995 issued under Section 7 of the Act is said to be bad. However, as it is only a notice, it is always open for the petitioners to agitate before the authority concerned bringing out various circumstances as to how they are entitled to the possession and assignment of the lands.

For the foregoing reasons, this writ petition is dismissed. However, the petitioners are directed to approach the 3rd respondent-

Joint Collector and offer their explanation if not already offered, within a period of four weeks from today, and the 3rd respondent shall hold an enquiry after giving an opportunity to the petitioners to advance their cause as to how they are entitled to the pattas. Pending enquiry as directed above, it is made clear that the petitioners shall not be dispossessed from the lands in question. No costs.

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13.02.2007

bcj